

Members

Rep. Vernon Smith, Chair
Rep. Ralph Ayres
Rep. Duane Cheney
Rep. Ralph Foley
Sen. William Alexa
Sen. Anita Bowser
Sen. David Ford
Sen. John Waterman



CORRECTIONS MATTERS EVALUATION COMMITTEE

LSA Staff:

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Committee
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Authority: 2-5-21-10

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MEETING MINUTES¹

Meeting Date: October 12, 2000
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St.,
Room 156 C
Meeting City: Indianapolis, Indiana
Meeting Number: 4

Members Present: Rep. Vernon Smith, Chair; Rep. Ralph Foley; Sen. David Ford; Sen. John Waterman.

Members Absent: Rep. Duane Cheney; Rep. Ralph Ayres; Sen. Anita Bowser; Sen. William Alexa.

Representative Smith called the meeting to order at 1:45 p.m. Because four of the eight members were absent, Representative Smith announced that he would wait until the next meeting to formally adopt the minutes of the meeting on September 28.

He then recognized Mark Goodpaster to provide a report with answers to the information requests that the committee members had requested at earlier meetings. The memo provided by Mark Goodpaster is included in Attachment A of these minutes.

Representative Smith indicated that the Department of Correction needs to improve the type of information that it provides concerning recidivism rates and especially whether participation in educational programs reduces recidivism rates among offenders.

Board of Correction

Representative Smith then recognized James Holland to speak about his concerns about the Board of Correction. Mr. Holland told the members that he is the first African American on the Board and that he wanted to share some of his experiences and concerns about the Board with the Committee members.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Mr. Holland's most serious concern is that the responsibilities of the Board and the extent of the oversight of the Board over the Department of Correction are not very clear. He told the Committee members that the Board spent most of its time reviewing and approving changes to the policy manual and approving superintendent appointments at various facilities. He told the Committee that he asked the Department of Correction to prepare a memo concerning the Board's powers. This memorandum is included as Attachment B of these minutes.

Mr. Holland told the Committee that the Board's bylaws were written in 1977 while the statute creating the Boards were not enacted until 1979. Because of the significant increase in the number of correctional facilities over the past 23 years, he suggested that the statutes should be reexamined.

Representative Smith suggested that the Board members revise the Board's bylaws in light of the current condition of the Department of Correction. Representative Smith observed that the DOC has made substantive changes concerning commissaries, how telephone charges are made and what offenders can keep in their cells. He indicated that these changes have all been made without review by the board. Representative Smith suggested that his interpretation of the statute was that the commissioner develops these programs and the Board has the power to review them. Representative Smith also questioned whether a conflict existed in the law concerning the relationship between the Board and the Department.

Representative Foley indicated that the Board members should amend the bylaws prior to suggesting changes in the statute about the Board's mission.

Mr. Holland reiterated his concern that the Board of Correction does not have authority over the Commissioner of the Department of Correction. He told the Committee that he receives letters from staff members about racism and other biases. He said that representatives approach him about issues of concern at the various correctional facilities but he feels that the Board has no power to provide the proper oversight. He provided three examples of policies that have been implemented which the Board neither reviews nor approves:

- the distribution of community corrections grants;
- the prohibition of the use of tobacco products in the correctional facilities;
- the use of out of state facilities to accommodate additional offenders instead of constructing new facilities.

Representatives of the Department of Correction then spoke about the Board. Robert Bugher, staff counsel of the Department of Correction spoke about the difference between the rules that govern daily operations of the correctional facilities and the rules that are promulgated under IC 4-22. He told the Committee members that any proposed rule changes in the administrative code are reviewed by the Board of Correction.

Michael Pavese, Policy Manager for the Department of Correction also spoke about the functions of the Board and its relationship with the Department of Correction.

Rev. Byron Vaughn spoke on behalf of ex offenders concerning the problem of legislative intent. He said no one seems to address the intent of legislation which he considers to be the proper oversight of the Department of Correction.

Mary Jo McFeeny, representing CURE (Citizens United for Rehabilitation of Errants) told the Committee members that the president of CURE meets with the commissioner every three months about offender concerns. She told the Committee that the president asked why there is not an ombudsman office for the Department of Correction. She told the Committee that the commissioner indicated that the Board of Correction serves this function.

Senator Ford asked about how contracts with out of state facilities are reviewed. Mr. Pavese indicated that the contracts are reviewed by the department of administration, the state budget agency, and the governor's office.

George Angelone, LSA Senior Staff Attorney, spoke about the legal foundation of the Board of Correction. He reported that Rep. Smith made a request to LSA to evaluate the relative legal authority of the Department of Correction and Board of Correction. In response to Rep. Smith's request, Mr. Angelone conducted some preliminary legal research into the issues raised by Mr. Holland.

Mr. Angelone indicated that the current law governing the Board of Correction was enacted as a result of a study by the Correctional Code Commission in 1977. The current law enacted in 1979 is nearly identical to the Proposed Final Draft prepared by the Commission. In its commentary to IC 11-12-1-2, the Commission stated "[t]his section places policy authority in a seven-member Board of Correction rather than a single department head". In its commentary to IC 11-12-1-3, the Commission stated that the Board of Correction "has the power to determine department policy, but may not exercise administrative or executive duties nor deal with specific procedural matters, within the Department."

These provisions suggest that the Commission and the Indiana General Assembly that adopted the law intended for the Board of Correction to be a policy-making body. There is no indication in this commentary that the Commission intended the term "policy" to be used in any special or technical sense. However, based on a review of Indiana's published appellate decisions, Mr. Angelone could find no instance in which an action of the Department of Correction or the Commissioner of the Department of Correction has been voided because the Department or Commissioner failed to get the approval of the Board of Corrections. As a consequence, Mr. Angelone indicated that he could not give a conclusive opinion on the meaning of the law governing the Board of Correction because the courts have not finally decided the issue.

Kelsey Kauffmann told the Committee that she had problems obtaining the names of the Board. She indicated that the Board is only as good as the members. She said that the legislation allows the governor to appoint all of the members. She suggested that the current statute results in a do nothing board. She suggested that one method to correct this is to allow the opposition party to appoint members of the board.

Senator Ford asked about the arrangements of the Department and the Board in other states. Representative Smith suggested that interested parties assemble and develop a solution. He indicated that he would have a draft prepared based on recommended solutions.

Offender Telephone Charges

Representative Smith turned his attention to the issue of offender telephone charges, the final discussion item of the day.

Under current arrangements, offenders in DOC facilities and in most county jails are required to call collect in order to speak to anyone outside of the facility. These collect call charges must be paid by the person receiving the call. Since many of the friends and family of the offenders are on limited income, advocates have complained of the unfair treatment of this policy. Mary Jo McFeeny, representing CURE told the members of the Committee that Celia Sweet, president of CURE accepted two collect calls from prisoners in Marion County jails. Each 20 minute call cost \$14.60. In contrast, she spoke to a person in Birmingham, AL for 40 minutes one evening call and was charged \$3.20. She also told the Committee members that each prison and jail seems to have its own rules on telephone charges

Diane Mains, Staff Attorney for the Department of Correction, told the Committee that the Department of Correction is working with Department of Administration to develop a request for proposal to finance the security features on the current program without requiring all outgoing calls to be assisted collect calls from the same telephone services provider. She also indicated that DOC is considering prepaid phone cards as one option.

Jay McQueen, Department of Administration, provided the Committee with a list of technology projects that are being financed from these monies collected by pay telephones. He indicated that 97% of the commissions received come from pay phones in correctional facilities. He also told the Committee that the telephone rates are established by various regulatory agencies. He also told the Committee that the current contract ends in March, 2001, and in the next contract, the Department of Administration will take into account alternative pricing.

Representative Smith told the Committee that he was pleased to hear that the Department was considering these changes but that he will still introduce a bill that will make the costs of the phone calls be based on costs.

Representative Smith then announced that the agenda for the next meeting will include issues of

- the prevalence of hepatitis c among offenders in state correctional facilities;
- the effect of supermax on the mental health of offenders; and
- religious activities in prisons.

The meeting adjourned at 4 p.m.